

Consolidated File No. 70-CR-09-19749

In re Minnesota Intoxilyzer 5000EN Source
Code Litigation in Criminal Cases

**CRIMINAL CASE
MANAGEMENT ORDER**

WHEREAS, the Court has determined that this Case Management Order ("CMO") is appropriate and will be of assistance in the efficient management of this litigation; **IT IS HEREBY ORDERED**, that this CMO be and hereby is entered as follows:

1. Case Designation

Every filing shall contain, in its caption, the Master File Number 70-CR-09-19749. In addition, for each separate case the individual originating County file number assigned to each case must also be included in the caption for any filing which pertains to an individual case. Filings in the Master Court File shall be made as set forth in the following paragraph. Attached hereto as Exhibit A is a listing of the original file numbers and other pertinent information for each case which is presently subject to this Order.

All cases and all filings for the Master Case File herein shall be directed to Judge Jerome B. Abrams; CO: Source Code Staff; Chambers 1; 200 Fourth Avenue West; Shakopee, MN 55379-1220. Regardless of where the case was initially filed, all cases subject to the Minnesota Supreme Court's January 11, 2010 Assignment Order, A09-2109, are to comply with the terms of this CMO. All filings for the individual matters shall be filed with the Court Administrator's Office in the originating county.

FILED

APR 21 2010



2. Applicability of Order

This Case Management Order (“CMO”) applies to all pre trial, and trial proceedings concerning the “Source Code” issue in the Criminal Cases listed in Exhibit A and as added from time to time upon consent of the parties. Upon resolution of the “Source Code” issue, each case shall be returned to its originating County for such further trials or hearings as may be required. All references to “Rules” herein shall be references to the Minnesota Rules of Criminal Procedure unless otherwise indicated.

3. Filing and Service of Papers

a. Master Service List.

Except as otherwise provided for herein, all papers or pleadings filed with the Court or served upon a party shall be served as described in this CMO on Liaison Counsel for all parties to this action who shall then serve the parties for whom they are liaising. For the purposes of economy, it shall be sufficient to state in a certificate of service that the relevant document was served on Liaison Counsel for all parties as of that date.

b. Method and Timing of Service.

Service of all pleadings, motions, deposition notices, requests for discovery and other papers (collectively “papers”) required to be served shall be affected upon the parties with copies to all persons through Liaison Counsel by electronic mail unless such party or their counsel requests service by some other means. Papers served by electronic mail shall be attached to e-mails as Adobe Acrobat (.pdf) files or Microsoft Word (.doc) files. To the extent a party is unable to effect service by

electronic mail, service may be affected by facsimile, overnight mail, or regular mail. Large exhibits, affidavits, declarations, or other supplemental documents may be served by overnight mail.

All Orders of the court in connection with this case shall be posted on the State Court's Website at: <http://www.mncourts.gov/?page=3928> and shall also be transmitted to Liaison Counsel for service upon the parties in accordance with the procedures set forth herein. Counsel may request service of Orders by mail, by making such a request of Christina LeClaire, Source Code Office Assistant at 952-496-8910 or Christina.LeClaire@courts.state.mn.us.

c. Filings.

The original of every pleading and motion shall be filed with this Court along with proof of service on all Liaison Counsel. The original of each filing shall be directed to the Master File; one copy shall be directed to the originating county for filing in the individual case file. A courtesy copy of every pleading, motion, or letter shall also be directed to Judge Abrams, C/O Daniel J. Sagstetter, Judicial Law Clerk. The filing of discovery materials with this Court shall not be made unless a part of a motion, affidavit or used at a hearing unless otherwise directed by the Court. Except that the original of all such papers which are not filed with this Court under such rules shall be kept in the offices of counsel responsible for generating such pleading, motion or discovery.

d. Correspondence.

All materials, such as correspondence, which are not due to be docketed (such as the Written Notice of Consent to Assignment Forms), shall be sent directly to the chambers of Judge Abrams. Correspondence and other materials will only be accepted if they are in regards to general administrative matters. The parties shall not submit correspondence regarding substantive matters or any other substantive materials directly to the Judge assigned to the case unless requested by or authorized by Judge Abrams. The corresponding party shall contemporaneously forward a copy of all correspondence and other materials sent to Judge Abrams to all Liaison Counsel by electronic mail, regular mail, or other means as may be necessary.

e. Documents Filed with the District Court

Notwithstanding the foregoing, any motion genuinely requiring emergency relief shall be delivered directly to the chambers of Judge Abrams. Any such document shall also be served electronically or faxed to all Liaison Counsel on the date of delivery. Proof of service shall be filed within (5) five business days thereafter.

4. Discovery

a. Avoiding Redundancy.

All parties should use their best efforts to avoid unduly duplicative submissions and propound requests to the end of minimizing the need for any other party to perform repetitive file searches or interviews of

employees and agents on the same topics. The avoidance of duplication does not relieve counsel or parties of their individual responsibilities.

b. Document Requests.

The parties shall not unreasonably refuse to grant extensions of time if reasonably required due to the voluminous number of documents being produced or other necessity associated with their disclosures.

i. Place of Production and Procedures.

Unless otherwise agreed by the parties, parties shall make disclosures including the production of any documents for inspection and copying, to the extent practicable, in the form and manner in which the documents have been maintained in the ordinary course of business or in which they previously have been maintained for production in litigation. To distinguish effectively among the documents designated for copying by the parties, each page of each document copied by any party shall bear a unique document identification number, with a unique prefix which identifies the party producing the document ("Bates Stamps" or "Bates Label"). Where documents or portions of documents are withheld, the parties shall, either through the numbering system or as otherwise provided in this Order, to the extent reasonably practicable, identify the number of pages withheld in a manner sufficient to indicate their location in the file being produced. Where part of a page is redacted, both the fact and location of the redaction, and the size or extent of the redaction

shall be made clear on the face of the document.

Within a reasonable time before production, the producing party shall advise the inspecting party of the approximate volume of the documents and a general description of the types of files or other materials involved. Each party shall produce its documents at its option: (a) by production of originals as they are kept in the ordinary course of business; (b) by production of as legible as possible photocopies in the same format; or (c) by electronic means or other computerized storage. Notwithstanding these provisions, any party may request to inspect the original of any document, communication, or thing produced and the parties shall make arrangements for such inspection within ten (10) days of the request.

ii. *Privilege Log.*

If a party determines that a document which may be subject to disclosure subject to attorney/client privilege, attorney work product protection, or any other form of privileges or protection, the following method of handling the privileged or protected writing shall be followed. The producing party may withhold the privileged or protected document and must identify the withheld document on a privilege log which shall be provided to the requesting party and all other parties as soon as practicable, but no more than thirty (30) days following the date on which the producing party is due to commence physical production of the requested documents. If after completion of

production pursuant to a particular demand for inspection the producing party discovers additional responsive documents and determines any of them to be subject to attorney/client privilege, attorney work product protection, or any other form of privilege or protection, the producing party may withhold any such privileged or protected document and must identify the withheld document on a privilege log which shall be provided to the requesting party as soon as practicable, but in no case more than thirty (30) days after the documents are discovered. Likewise, to the extent any material within a document otherwise producible contains privileged or protected information, the document shall be produced subject to redaction of the subject privileged and protected material and shall be listed on the privilege log. All privilege logs shall identify each privileged document or work product by providing the Bates Label range, date, author(s), recipient(s), the subject matter of the document withheld or information redacted and the nature of the privilege or work product protection asserted. Nothing in this section shall preclude a party from challenging a claim of privilege.

c. Confidentiality Order.

All documents and other discovery materials and testimony produced or provided in this action may be subject to the terms and provisions of the Protective Order, in the form as attached as Exhibit B hereto, which has been entered in each case.

d. Inadvertent Production of Privileged Information.

If a party inadvertently produces information or documents that it considers privileged or protected material, in whole or in part, or learns of the production of its privileged or protected material by a third-party, the party may retrieve such information or documents or parts thereof, memoranda and other material as follows:

- (1) Any assertion of inadvertent production shall be made as soon as practicable, but in any case within ten (10) days of the date the party discovers that it, its agents or attorneys, or a third-party has inadvertently produced the privileged document. The party asserting inadvertent production must provide written notice to all Liaison Counsel via electronic mail or as otherwise provided herein that the party claims the document, in whole or in part, to be privileged or protected material; in addition, such notice must state the nature of the privilege or protection and the factual basis for asserting it. No assertion of inadvertent production will be made less than thirty (30) days before trial or fourteen (14) days after service of a trial exhibit list, whichever comes later.
- (2) Upon receipt of such notice, all parties who have received copies of the document shall, within five (5) days thereafter, confer with the producing party and discuss how to resolve the issue. If no agreement is reached, the producing party may request reasonable relief from the Court, including an order that all copies of

inadvertently produced documents shall be returned to the producing party, destroyed or otherwise be made available for procurement by the requesting party. Parties who received copies of inadvertently produced documents may oppose the granting of such relief on any permissible basis, including requesting an order that the inadvertently produced documents are not privileged and do not constitute protected attorney work product.

- (3) In the event that only part of a document is claimed to be privileged or protected, the party asserting inadvertent production shall furnish to all parties redacted copies of such document, removing only the part(s) thereof claimed to be privileged or protected, together with such written notice.

e. Mutual Use of Discovery.

To help avoid redundancy, all discovery served by any party inure to the benefit of and are enforceable by any other party. The settlement, release or dismissal by any means of any party propounding such discovery will not in any way limit or extinguish any other party's obligation to comply with the discovery.

5. Motion Practice

Except as otherwise provided by the Court, pretrial motions in these cases shall be governed by the Minnesota Rules of Criminal Procedure, subject to the additional relaxation of time and other procedural requirements as set forth herein. This Court shall not hear or decide matters except those under which bear upon or relate to the

source code issue as assigned to the undersigned by Chief Justice Magnuson in accordance with the Order issued in Minnesota Supreme Court File Number A09-2109.

Pursuant to Rule 9.03, Subdivision 3 these rules are modified procedurally as follows:

- (1) Motion hearing dates shall be obtained directly from Judge Abrams' law clerk, Daniel Sagstetter;
- (2) Proposed orders for dispositive motions shall not be submitted unless specifically requested by the Court;
- (3) The moving party shall provide a certification of an attempt to meet and confer to resolve every dispute which concerns failure by either the Prosecution or Defense to disclose information under Rules of Criminal Procedure 7.04, 9.01, Subdivision 1; 9.02 Subdivision 1; and 9.03, Subdivision 2.
- (4) In all other situations, the parties may obtain a motion hearing date upon request, as available. Counsel may make independent motions in each case, or motions in the Master Case, applicable to particular identified individual case(s).
- (5) All motions shall be in writing and shall be served and filed at least 10 days before the scheduled hearing. All responses shall be served and filed at least 3 days before hearing. The provisions of Rule 10.04, Subdivision 3 apply to any motions in which witness testimony will be offered.

Counsel shall attempt to coordinate a hearing date among all interested counsel and parties and notice the motion(s) for hearing on a date cleared with Mr. Sagstetter.

Nothing shall restrict any party's right to apply to the Court for an order shortening or extending time or page limitations on a motion upon a showing of good cause, but only after making good faith efforts to resolve the issue among counsel.

6. Coordination Among Parties

The Court expects cooperation among the parties to coordinate motion practice, disclosures, trial, or otherwise to minimize the expense in these cases. The parties shall, to the maximum extent practicable and consistent with their individual responsibilities, avoid duplicative motions, briefs and discovery ("filings") consistent with each party's individual interests. Since many parties have a commonality of interest as to the issue in this proceeding, they may serve joint discovery and file joint submissions with the Court and/or adopt, join in or support any motion made or discovery propounded by another party simply by so noting in writing.

Each party has an affirmative duty to immediately notify the involved party upon receipt of any misdirected attorney/client or other privileged communication or work product document. Upon written request, the receiving party shall either (a) return such communication or other document, along with any and all copies, to the involved party, or (b) provide correspondence or affidavit to the involved party attesting to the fact that such communication or documents and all copies thereof have been destroyed.

7. Depositions

a. Cooperation.

The parties will use reasonable efforts to schedule depositions by agreement. To that end, the parties will participate in bi-weekly discovery conferences by telephone for the purpose of making best efforts to select

mutually convenient dates and places for the initial round of depositions, identifying witnesses and arranging other matters. Unless otherwise agreed, formal notice of depositions scheduled is required pursuant to Rule 21.02. Unless exigent circumstances exist, the parties will be advised of a deposition at least ten (10) calendar days before a deposition is scheduled to commence. In the event that sufficient interest exists in these cases to have attendance by counsel and parties entitled to statutory reimbursement or otherwise under Rule 21.03, Subdivision 1, and counsel are to make arrangements for the deponent's expenses, to be brought to Minnesota for their deposition to be taken, whenever possible.

Nothing in this CMO authorizes or directs that defendants are to be deposed by the prosecution in any case without further Order of the Court.

b. Non-Party Depositions.

Counsel shall attempt to resolve with any non-party deponent the identification for production and subsequent production of any documents being subpoenaed. Whenever possible, this process shall be completed no later than seven (7) days before the date on which the deposition has been scheduled. All counsel shall be given notice of any documents identified for production pursuant to subpoena and shall have the right to inspect and copy, at each inspecting party's expense, whatever documents are produced by a non-party in response to a subpoena. Upon request, a party shall conduct a search of all records that may disclose the present address of any former employee and shall provide

such information to the requesting party as soon as practicable. Nothing in this Order shall preclude any party, if it so chooses, from obtaining the attendance of any former employee or officer of another party for deposition by subpoena in the first instance.

c. Stipulations.

Unless otherwise noted on the record, the following stipulations shall apply to all depositions in these actions:

- (1) Any objection by a single party shall be deemed an objection by each and every similarly situated party, although parties may if they choose separately state their objection on the record;
- (2) Corrections to a deposition transcript shall be listed on an errata sheet, copies of which shall be served on all parties by counsel for the deponent or the deponent, within thirty (30) days following receipt of the deposition transcript;
- (3) To the extent practicable, exhibits shall be attached to the original transcript. Where the form or volume of exhibits makes attachment to the transcript impractical, the custody of such exhibits shall be maintained at the office of the attorney taking the deposition or the court reporter and such exhibits shall, after reasonable notice, be subject to inspection and copying by any party during normal business hours or by appointment;
- (4) The parties shall strive to select and retain court reporters that can produce transcripts in both manuscript and computer-readable format

or another agreed upon format. The parties may stipulate to maintain an online repository for all depositions taken in these cases subject to limitations on accessibility as may be determined by the parties and applicable Protective Orders.

d. Deposition Schedule.

With respect to aged or infirm witnesses, counsel shall abide by the reasonable request of such witnesses with regard to timing and availability for deposition testimony. The parties will undertake all reasonable efforts to conduct depositions in an efficient, cost-effective and expedited manner.

e. Attendance and Interrogation.

All parties are entitled to be present (although attendance of parties is not required) and represented at every deposition and to inquire of a deponent through their counsel. A former employee or officer may be represented at his or her deposition by counsel for the former employer. In order to facilitate necessary arrangement for attending counsel and parties, not less than two (2) days prior to the commencement date of a deposition, any counsel intending to attend the deposition shall use its best efforts to notify the noticing party and counsel for the deponent.

f. Time and Location of Depositions.

Depositions may be held Monday through Friday, and shall commence no earlier than 9:00 a.m., and conclude no later than 5:00 p.m. local time, unless otherwise agreed between counsel or ordered by the Court. No

deposition shall be scheduled for more than two (2) consecutive days absent agreement by the parties or order of the Court. A deposition may, however, proceed for a third consecutive day without agreement of the parties or order of the Court if there is at least eighteen (18) hours between the end of the second deposition day and the commencement of the third. To save expense and travel time, all sessions of the deposition of a single deponent shall, to the extent consistent with the witnesses' schedule and health and the deposition schedule, and unless otherwise agreed, proceed on successive weekdays and for the full deposition day until completion. Except as the parties may agree, no deposition shall be scheduled on the following dates: Court hearing dates, Martin Luther King, Jr.'s Birthday, President's Day, Good Friday, Passover (the first two days), Memorial Day, Independence Day (including the preceding Monday if it falls on a Tuesday or the following Friday if it falls on a Thursday), Labor Day, Rosh Hashanah (two days), Yom Kippur (two days), Columbus Day, Veterans Day, and Thanksgiving (Wednesday, Thursday and Friday). Depositions of witnesses residing outside the United States shall not be scheduled on national holidays in the witness' home country. In addition, no depositions shall be scheduled between December 21st and January 4th in any year except upon agreement of the parties.

g. Out of State Depositions.

In order to facilitate the orderly taking of any such foreign deposition, the Court hereby orders commissions to be granted to take out of state

depositions of parties and non-party witnesses, at such times and in such places as are agreed upon by counsel, such commissions to be issued to persons duly authorized by the law of the foreign state to take such testimony. This Order appointing commissions to take foreign depositions shall be applicable to all out of state depositions taken in this action, without the need for any party to file any additional motion for appointment of a commission to take any out of state deposition. The parties will provide the Court with a template order, or otherwise with other necessary appropriate orders respecting the appointment of commissions.

h. Exhibits.

To the extent practicable, all parties intending to question a witness at a deposition with respect to documents shall provide a reasonable number of copies of such documents for the use of the other parties in attendance at the deposition. Exhibits should be identified by the name of the witness and numbered consecutively in each deposition.

i. Conduct at Depositions.

All depositions taken in these cases shall be conducted in accordance with Rule 21.04, Subdivisions 1-3.

j. Immediate Presentation of Deposition Disputes.

Consistent with the Rules and the concepts and objectives set forth above, if disputes arise during a deposition which the attorneys cannot resolve by agreement and which, if not promptly decided, will critically disrupt the discovery program or court-imposed schedules, the parties

may submit the matter orally by telephone to the undersigned if available.

8. Avoidance of Unnecessary Duplication

Cooperation and communication among parties as ordered herein shall not constitute the waiver of any applicable privilege or be construed as evidence of wrongful conduct. In the event that any party is in genuine doubt about the legal effect of the communication and cooperation ordered herein, such party may seek the Court's clarification of the party's responsibilities before proceeding.

9. No Waiver of Privilege Due to Joint Efforts

Communications in connection with this case between and among counsel for the parties and/or their clients, including the exchange of documents and information, shall be deemed subject to the attorney/client privilege, work product protection, and any other applicable privilege or protection to the same extent as if the communication had taken place within one law firm or between one law firm and one client represented by that firm. Protection afforded by this Order will survive the conclusion of this litigation and the dismissal of any party from this action. If a party withdraws from any cooperative litigation efforts with other parties, previous communications among the withdrawing party and such other parties and all work product shared by or with the withdrawing party with respect to this action, will remain subject to any attorney/client privilege, work product protection, or other privilege that attached at the time the communications were made or the work product was shared. Any such withdrawing party is under a duty not to reveal information obtained through such cooperative efforts.

10. Rules and Procedures

This CMO supersedes any provision of the Minnesota Rules of Criminal Procedure to the extent such rule grants discretion to the court to direct the manner and methods of conducting the activities which are the subject of this CMO.

11. CMO Binding on Subsequently Added Parties

Any new party to this consolidated action having first consented pursuant to the Written Notice of Consent Form attached as Exhibit C hereto and after the date the CMO is entered up to and including July 1, 2010 shall be served with a copy of this CMO by Liaison Counsel and any subsequent Case Management Orders. Any such new party will be bound by this CMO and all other Case Management Orders unless it files a motion for relief with the Court within ten (10) days after service of this CMO and other case management order upon it. Upon the addition of any party to this action, the party adding the new party shall serve a copy of this CMO on counsel for the new party within five (5) days of the date of receiving notice of the identity of the new party's counsel.

12. Liaison Counsel

In recognition of the large numbers of prosecutors and defendants in this action, and to promote sufficient communication between and among the parties and the Court, the parties will appoint counsel to serve as Liaison Counsel, designated as follows:

For Prosecutors:

Bill Lemons
Minnesota County Attorney's
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pconverse@co.scott.mn.us

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Bill Bernard
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For Defendants:

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651-539-1029
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Subject to the right of any party to present individual or divergent positions, the Liaison Counsel is vested by this Court with the following responsibilities and duties:

- (1) Communicate with opposing Liaison Counsel, communicate with all other counsel and unrepresented parties in its respective group and receive and forward orders, notices and correspondence from this Court and the Court Administrator in any matter pertaining to this action to counsel and unrepresented parties in its respective group;
- (2) Promptly forward to all counsel and unrepresented parties for its respective group copies of all documents from the Court or the Court Administrator, not otherwise provided to them, report to all counsel and unrepresented parties in the represented group on all meetings and communications with this Court or other Liaison Counsel;
- (3) Organize and schedule meetings of counsel for joint action;
- (4) Coordinate common discovery;
- (5) Initiate action by the Court to remedy disputes among the parties;

- (6) Participate in conference calls with this Court to resolve disputes and scheduling matters;
- (7) Maintain a current copy of a service list for its respective group and make a copy of this list available to the Court upon request; and
- (8) Perform such other duties as may be expressly authorized by further order of this Court or agreed to by counsel.

Liaison Counsel shall not be deemed to speak for, act for, or bind any particular party absent express authority provided by such party. All counsel of record shall have an opportunity to present to this Court their respective views and opinions as to matters before this Court. The Liaison Counsel shall not be liable for any actions arising from their respective roles as such and this Court shall act to remedy any inadvertence as appropriate.

Additional or replacement Liaison Counsel may be identified upon appropriate motion to the Court. The moving party shall be required to explain the need underlying the request for additional or replacement Liaison Counsel.

13. Pro Hac Vice Admission of Attorneys

Any lawyer admitted or currently licensed to practice before a Court of general jurisdiction in any state in the United States and who is specifically associated with a currently licensed Minnesota lawyer may be deemed admitted pro hac vice to practice before the Court in this litigation only. Other than those attorneys admitted pro hac vice prior to the date of issuance of this Order, attorneys may be deemed admitted pro hac vice upon completion of the following:

- A. An Affidavit Setting Forth:

- (1) His or her full name and non-Minnesota business address;
- (2) His or her date and place of each state licensure;
- (3) A representation that the affiant's license to practice law is current and is not under revocation, suspension, restriction or limitation in any other state of admission or in the federal courts, and that the affiant is an attorney in good standing in all states of licensure;
- (4) A representation that the affiant is, or will promptly become, familiar with all applicable Minnesota court rules, procedures and requirements of professional conduct, and will follow and abide by such rules, procedures and requirements.

B. A Notice of Pro Hac Vice Representation Setting Forth:

- (1) The non-Minnesota lawyer's full name and non-Minnesota business address, telephone number, facsimile number, and e-mail address;
- (2) The name, address, telephone number, facsimile number and e-mail address of the Minnesota lawyer or law firm with whom the attorney will associate for purposes of this litigation;
- (3) The name of each party whom the attorney will represent.

Such affidavit and notice of pro hac vice representation shall be filed with the Court Administrator of the originating county of the case within the First Judicial District. Notice of pro hac vice representation shall be served upon all counsel on the Master Case List.

14. Status Conferences and Scheduling

a. Status Conferences.

General status conferences shall be held at 1:30 p.m. every other Friday as needed from April 30, 2010 until no longer needed or as otherwise directed by the Court. The principal purpose of the general status conference is to discuss and resolve administrative issues common to all parties. Issues that affect only specific parties and that have no significant implications for other parties will be calendared for a separate hearing date or, if the status conference agenda permits, for 2:30 p.m. on a status conference date.

Not later than the preceding Friday before the status conference, Liaison Counsel shall confer and shall determine whether or not a status conference for the following Friday will be necessary. If they agree that such conference is not necessary, they shall promptly notify the Court the conference can be cancelled and notify the remaining parties of the cancellation. If Liaison Counsel decides to proceed with the status conference or counsel or an unrepresented party of its respective group expresses a need for a status conference, then the requesting party(ies) shall prepare a common agenda and shall notify all other parties and the Court thereof not later than the close of the business day on the Monday preceding the conference date of the agenda.

b. Scheduling.

In recognition of the complexity of the issues before the Court, the Court will discuss the progress of the parties in discovery and other matters at the status conferences and upon application of the parties jointly or unilaterally may amend

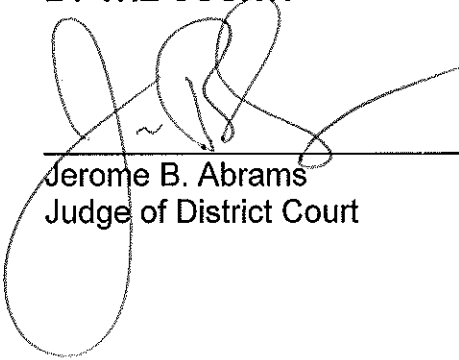
or modify the scheduling order from time to time.

The following dates and deadlines shall apply to all actions subject to this CMO:

July 1, 2010	Petitioner's/Defendant's Expert Disclosures
July 1, 2010	Non Expert Discovery Ends
July 1, 2010	Final Date for Adding Cases to Consolidation
August 13, 2010	State/Prosecution Expert Disclosures
August 16, 2010	Expert Discovery/Depositions (if any) begins
September 7, 2010	All Non Source Code Issues Completed in Consolidated Cases
September 20, 2010	Expert Discovery Ends
September 27, 2010	Final Hearing on Source Code

Dated: 4-21-10

BY THE COURT:



Jerome B. Abrams
Judge of District Court

Exhibit A

Consolidated Criminal Source Code Matters

As of 4/21/2010

For the cases below, all the procedural requirements have been met for assignment pursuant to Chief Justice Magnuson's Order dated January 11, 2010 A09-2109. Cases not on this list may be lacking certain procedural requirements. Please contact Christina LeClaire for further information. 952-496-8910

<u>Case Number</u>	<u>Location</u>	<u>Case Caption</u>	<u>Attorney</u>
27-CR-09-49250	Hennepin	Aldrich, Grant W	Jason Brown & Anna Kaul
19HA-CR-09-2850	Dakota	Anderson, Gregory	Richard Ohlenberg
05-CR-09-2628	Benton	Ashbaugh, Shawn	Charles Ramsay
27-CR-09-31452	Hennepin	Belgarde, Christina	Patrice Eddy & Jason Hutchinson
71-CR-09-44	Sherburne	Berthiaume, Brian	Chris Emil Brevik
27-CR-09-28015	Hennepin	Bishop, Jeremy N	Thomas Shiah & Jason Huchinson
19AV-CR-09-30318	Dakota	Blackfelner, Joseph	Christopher Grove
27-CR-09-47337	Hennepin	Block, Cassie	David Valentini & Frank Rondoni
27-CR-09-44060	Hennepin	Boeman, Douglas	Emilio Reyes & Steve Tallen
69DU-CR-0903625	St. Louis	Braafladt, Charles	Joanne Piper-Maurer & Chris Stoke
03-CR-09-1062	Becker	Branstrom, Richard	Tammy Merkins & Michael Samuelson
27-CR-07-125036	Hennepin	Brewington, Joseph	Peter Timmons & Frank Rondoni
27-CR-09-26469	Hennepin	Bronczyk, Jack	Jeffrey Sheridan & Erica Glassberg
71-CR-09-1813	Sherburne	Buhl, Duane	Joseph Kaminsky
27-CR-09-52934	Hennepin	Bursch, Nathan	Patrice Eddy & Elliot Knetsch
66-CR-08-4301	Rice	Carlson, Richard	Paul Beaumaster & Carson Heefner
19AV-CR-09-20081	Dakota	Carlson, Stephanie	Mark Giancola
27-CR-09-37117	Hennepin	Carroll, Roy Lee	Patrice Eddy & Jason Hutchinson
27-CR-09-41565	Hennepin	Civilla, Adam	Heather Ring & Steve Tallen
27-CR-09-41539	Hennepin	Croft, Johathan	Patrice Eddy & Frank Rondoni
31-CR-09-3702	Itasca	Cubow, Joseph	Dimich/Undem
19AV-CR-09-16897	Dakota	Cummings, Nicholas	Douglas Hazelton

19AV-CR-09-22056 27-CR-09-39863	Dakota Hennepin	Czech, Kaitlin Damberg, Berik	David Valentini Marc Berris & Frank Rondoni Dimich/Undem Schmit/Rice David Valentini & Patrick Leach Eric Newmark Ethan Meaney & Frank Rondoni Eric Olson & Rolf Sponheim Paul Beaumaster & Thomas Handorff Paul Beaumaster & Thomas Handorff Marsh Halberg Anthony Grostyan & Steve Tallen Thomas Beito & Frank Rondoni James Loraas & Anna Crabb David Valentini & Patrick Leach Paul Rogosheske & William Clelland Debbie Lank & Frank Rodoni Glenn Binder Howard Bass Schmit/Undem Martin Azarian & Erica Glassberg Scott Lewis & John Thames Charles Clippert & William Clelland Joseph Kaminsky & David Ross Eric Olson & Frank Rondoni Ethan Meaney & Frank Rondoni David Valentini & Anna Kaul
31-CR-09-3973 31-CR-09-2835 27-CR-09-57570	Itasca Itasca Hennepin	Eckstrom, Timothy Elj, Lee Engel, Shari	
19AV-CR-09-5133 27-CR-09-49653	Dakota Hennepin	Engeldinger, Karla Erickson, Mary	
27-CR-09-44980	Hennepin	Evans, Katelyn	
66-CR-09-798	Rice	Faulhaber, Daniel	
66-CR-08-3244	Rice	Flicek, Christopher	
70-CR-08-22474 27-CR-09-43519	Scott Hennepin	Fritzvold, Tyler Garber, Alexander	
27-CR-08-63240	Hennepin	Geschwind, Adam	
27-CR-09-27021	Hennepin	Gilbert, Thomas	
27-CR-09-36746	Hennepin	Goeman, Mark	
27-CR-09-33832	Hennepin	Goettl, Daniel	
27-CR-09-57178	Hennepin	Goldberg, Bruce	
27-CR-08-63349 19AV-CR-10-157 31-CR-09-2891 27-CR-09-29722	Hennepin Dakota Itasca Hennepin	Graham, Lemonte Graham, Ted Grove, James Gunderson, Michael	
27-CR-09-41487	Hennepin	Gustafson, Trisha	
27-CR-09-42648	Hennepin	Hanson, Christopher	
27-CR-09-28191	Hennepin	Hanson, Erik	
27-CR-09-55914	Hennepin	Hjerleid, Gannon	
27-CR-09-39859	Hennepin	Hogue, Mark	
27-CR-09-8882	Hennepin	Holmes-Buscher, Cynthia	

66-CR-09-1756	Rice	Hullett, Jody	Kurt Fischer & Caron Heefner
71-CR-08-715	Sherburne	Hunter, Jeremy	Mark Giancola
27-CR-09-34182	Hennepin	James, Clyde	Patrice Eddy & Rolf Sponheim
27-CR-09-51052	Hennepin	Janni, Brian	Faison Sessoms Jr. & Frank Rondoni
27-CR-09-42816	Hennepin	Johnson, Nathan D	Eathan Meaney & Frank Rondoni
27-CR-09-48862	Hennepin	Johnson, Nita	Marc berries & Rolf Sponheim
33-CR-08-610	Kanabec	Kampa, Randall	Reese Frederickson & Joseph Kaminsky
27-CR-09-38244	Hennepin	Karaba, Robert	James Ventura & William Clelland
69DU-CR-09-5417	St. Louis	Kari, Blaine	Joanne Piper-Maurer & Chris Stocke
27-CR-08-40139	Hennepin	Karo, Scott	Daniel Koewler & Anna Kaul
19AV-CR-09-3986	Dakota	Kenison, Nicole	Derek Patrin
27-CR-09-59561	Hennepin	Kline, Marc	Eric Olson & Elliot Knetsch
27-CR-10-6158	Hennepin	Konechny, Nicolette	Jeffrey Ring & Patrick Leach
70-CR-09-1831	Scott	Kuhlman, Cynthia	Samuel McCloud
27-CR-09-43197	Hennepin	Lesage, Michael	David Valentini & Frank Rondoni
27-CR-09-27411	Hennepin	Lindquist, Brynne	Christa groshek
27-CR-10-3446	Hennepin	Lucas, Jamie	Joseph Kaminsky & Frank Rondoni
46-CR-09-1382	Martin	Lucas, Jennifer	Peter Timmons
27-CR-09-26456	Hennepin	Ly, Giang	Jeffrey Ring & Frank Rondoni
24-CR-09-2687	Freeborn	Lybarger, Travis	Lee Bjorndal & Douglas Hazelton
27-CR-09-44850	Hennepin	Majszak, Anthony	Jeffrey Ring
34-CR-09-237	Kandiyohi	Manko, Hannah	Richard Ronning & Ramona Lackore
27-CR-09-44051	Hennepin	Martin, Scott	David Valentini & Steve Tallen
27-CR-09-45895	Hennepin	Mathew, Thomas P	Martin Azarian & Erica Glassberg
27-CR-09-55022	Hennepin	Mead, William	Douglas Kans & Patrick Leach
71-CR-09-541	Sherburne	Miller, Peter	David Risk

13-CR-09-512	Chisago	Miska, Justin	Charles Ramasy
70-CR-07-27626	Scott	Mohn, Jeffrey	Doug Hazelton
19AV-CR-09-24125	Dakota	Moin, Gunnar	Richard Ohlenberg
27-CR-09-41545	Hennepin	Monette, Jeremy	David Valentini & Steve tallen
27-CR-10-1739	Hennepin	Nelson, Brent	Thomas Plunkett
27-CR-09-43454	Hennepin	Nelson, Chad M	David Risk & Frank Rondoni
27-CR-09-22086	Hennepin	Nesbitt, Betsy	Jeffrey Ring & Rolf Sponheim
27-CR-09-43882	Hennepin	Nguyen, Thanh	Max Keller & Anna Kaul
27-CR-08-59722	Hennepin	Nguyen, Trung	Jerod Peterson
33-CR-08-616	Kanabec	Norris, Charles E. Jr.	Reese Frederickson & Faison Sessoms Jr.
46-CR-09-1381	Martin	Osborn, Phillip	Peter Timmons
70-CR-08-10884	Scott	Ostman, Joshua	Eric Nelson
27-CR-09-40486	Hennepin	Osvatic, Sarah	James Ventura & Elliot Knetsch
27-CR-09-39985	Hennepin	Paustis, Jennifer	Judith Samson & William Clelland
27-CR-09-51444	Hennepin	Pavlov, Valdmir	James Loraas & Frank Rondoni
27-CR-09-55936	Hennepin	Peacock, Julia	Douglas Kans & Frank Romdoni
19K8-07-221	Dakota	Pedersen, Randall	Jeff Sheridan
27-CR-08-54823	Hennepin	Perry, Brett	Nicholas Granath & Rolf Sponheim
70-CR-08-25919	Scott	Povhe, Franklin	Roger Gershin
27-CR-09-42397	Hennepin	Ray, William	Faison Sessoms Jr. & Rolf Sponheim
31-CR-09-2646	Itasca	Reed, Jace	Dimich/Sterle
27-CR-09-47045	Hennepin	Rheinick, Christopher	Faison Sessoms & William Clelland
27-CR-09-40886	Hennepin	Rippberger, Edward	Joseph Kaminsky & Paul Baertschi
27-CR-09-46172	Hennepin	Schaffhausen, Chandler	Gerald Miller & William Clelland
34-CR-09-1497	Kandiyohi	Schimschock, Kyle	Stephen Wentzell & Carter Greiner
27-CR-09-51389	Hennepin	Schlemmer, Christopher	John Leunig & Frank Rondoni
27-CR-09-49515	Hennepin	Schneider, Tracy	Eric Olson & William Clelland
70-CR-09-3621	Scott	Schumacher, Steven	Brent Schafer
27-CR-09-42809	Hennepin	Shenoy, Ryan	Carson Heefner &

27-CR-09-43370	Hennepin	Shoquist, Kasey	Frank Rondoni Joel Heiligman & Steve Tallen
27-CR-09-45014	Hennepin	Sims, Michael	John Price & Rolf Sponheim
46-CR-08-512	Martin	Sirovy, Colin	Allen Eskens
27-CR-09-43617	Hennepin	Snyder, John	Howard Bass & Elizabeth Kelly
27-CR-09-38022	Hennepin	Souriyavong, Joseph	Jay Carey & William Clelland
27-CR-09-46122	Hennepin	Stenzel, Nathan	Douglas Kans & William Clelland
31-CR-09-2834	Itasca	Sullivan, Jennifer	Dimich/Giancola
27-CR-09-43118	Hennepin	Swanson, Karl	Carson heefner & Steve Tallen
27-CR-09-55973	Hennepin	Toller, Gerhart	Richard Swanson & Frank Rondoni
19HA-CR-09-2834	Dakota	Topping, Gretchen	Douglas Kans
31-CR-09-3621	Itasca	Tucker, Gregory	Dimich/Sterle
47-CV-09-721	Meeker	Vinar, Duane James ,III	Deborah Simonson & Ryan Pacyga
27-CR-09-37622	Hennepin	Walstrom, Joshua	Steve Meshbesher & Frank Rondoni
27-CR-09-24576	Hennepin	Warborg, Meranda	Joseph Kaminsky & William Clelland
40-CR-09-359	LeSueur	Weber, Rhonda	Samuel McCloud
27-CR-09-42964	Hennepin	Wetzstein, Bradon	Jay Carey & Paul Baertschi
27-CR-09-33849	Hennepin	Ziebarth, John	Scott Lewis & William Clelland

Exhibit B

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

Case Type: Implied Consent

Court File No. _____

Petitioner,

vs.

PROTECTIVE ORDER

Commissioner of Public Safety,

Respondent.

WHEREAS, the U.S. District Court for the District of Minnesota has entered a Consent Judgment and Permanent Injunction regarding access to the source code used in the operation of the Intoxilyzer 5000EN ("Source Code"), the breath-alcohol testing instrument used to enforce the driving while impaired ("DWI") and implied consent laws in Minnesota. This Consent Judgment and Permanent Injunction requires issuance of a Protective Order as a precondition to obtaining access to the Source Code; and

WHEREAS, this Court has ordered that the Source Code be made available for inspection and review or has found the Source Code to be relevant or material in the above-captioned case; and

IT IS HEREBY ORDERED:

1. As used in this Protective Order, the listed terms have the following meanings:

"Attorneys" means counsel of record in this matter;

"Confidential" documents and information are documents or information designated Confidential pursuant to Paragraph 2 herein; and

"Source Code" refers specifically to the Source Code for the Intoxilyzer 5000EN used in the State of Minnesota.

2. A Party may designate any document "Confidential," including interrogatory responses, other discovery responses, or transcripts, based on a good faith belief that the document constitutes or contains trade secrets or other confidential information. Source Code is hereby designated as Confidential, except for that portion of the Source Code assigned and delivered to the State pursuant to the Settlement Agreement between the State and CMI dated June 1, 2009.

3. All Confidential documents and information shall be used solely for the purpose of the above-captioned matter, or as otherwise permitted by the federal Consent Judgment and Permanent Injunction.. No person receiving such documents or information shall, directly or indirectly, use, transfer, disclose, or communicate in any way Confidential documents or information to any person other than those specified in Paragraph 4 herein and the federal Consent Judgment and Permanent Injunction.

4. Access to any Confidential document or information shall be limited to:
- (a) The Court and its staff;
 - (b) Attorneys of record and their law firms;
 - (c) Persons shown on the face of the document to have authored or received it;
 - (d) Court reporters retained to transcribe testimony;
 - (e) The Parties to this case;
 - (f) Outside vendors (limited to professional copy services);
 - (g) Outside independent persons who are retained by or otherwise assist a Party or its Attorneys to provide technical or expert services and/or give testimony in this action, and who are not, and have not been, employed by (as an employee,

agent, or consultant) or otherwise affiliated with, any manufacturer of breath alcohol testing instruments within the preceding twenty-four (24) months.

5. Any outside independent person (as defined in Paragraph 4(g) herein) who receives access to the Source Code or other Confidential information shall execute a Non-Disclosure Agreement in the form prescribed in Paragraph 3(c) of the federal Consent Judgment and Permanent Injunction before receiving access to the Source Code or Confidential Information. In addition, any Attorney or Party (as defined in Paragraphs 4(b) and (e) herein) who receives access to the Source Code shall also execute a Non-Disclosure Agreement in the form prescribed in Paragraph 3(c) of the federal Consent Judgment and Permanent Injunction before receiving access to the Source Code. Receipt of access to the Source Code pursuant to this Protective Order shall not constitute or convey any right, title, license, or other interest in any portion of the Source Code.

6. Non-parties producing documents in the course of this action may also designate documents as "Confidential" subject to the same protections and constraints as the Parties to this action. A copy of this Protective Order shall be served along with any subpoena served in connection with this action. All documents and information produced by such non-parties shall be treated as "Confidential" for a period of 15 days from the date of their production, and during that period any Party may designate such documents as "Confidential" pursuant to the terms of this Protective Order.

7. Any testimony or written report that contains Confidential documents or information will receive the same protections afforded to Confidential documents themselves. Confidentiality designations for testimony shall be made on the record or, where appropriate, by written notice to the other Party. It shall be the responsibility of the Party who noticed the

deposition, called the witness, or seeks to introduce the evidence, to designate such testimony or information as Confidential. The testimony of any witness (or any portion of such testimony) that contains Confidential information shall be given only in the presence of persons who are qualified to have access to such information pursuant to Paragraph 4 herein.

8. Any Party or non-party that inadvertently fails to identify documents or information as Confidential in accordance with this Protective Order shall, upon discovery of its oversight, promptly provide written notice of the error and substitute appropriately designated documents or information. Any Party receiving notice of improperly designated documents or information shall act immediately to retrieve such documents or information from persons not entitled to receive such documents or information and shall return the improperly designated documents or information to the producing Party.

9. Any document designated Confidential or containing Confidential information that is filed with this Court, including any expert report, shall be filed under seal. Any Confidential information shall be redacted from such document or report before it is made publicly available.

10. No action taken in accordance with this Protective Order shall be construed to be a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of any evidence in the case.

11. The obligations imposed by this Protective Order shall survive the termination of the above-captioned matter.

12. Any violation or breach of the terms and conditions set forth in this Protective Order shall be grounds for any appropriate sanctions available under the law.

Dated: _____

Judge of District Court

Exhibit C

**STATE OF MINNESOTA
COUNTY OF**

**DISTRICT COURT
JUDICIAL DISTRICT**

,
Plaintiff,

Court File No.:

v.

**WRITTEN NOTICE OF CONSENT TO
ASSIGNMENT**

,
Defendant.

We the parties in the above-entitled action hereby consent, in accordance with paragraph 3 of the January 11, 2010 Minnesota Supreme Court's Order A09-2109 and Judge Abrams' Criminal Case Management Order, to the following:

1. Consolidation of this matter before the Honorable District Court Judge Jerome B. Abrams solely for resolution of issues relating to the reliability of Intoxilyzer 5000EN results based on the source code of the instrument;
2. The parties understand that by consenting to this assignment, the Criminal Case Management Order and all amendments thereto issued by Judge Abrams, which are available for review at: <http://www.mncourts.gov/?page=3928>, shall be binding upon the parties. This includes designation of liaison counsel and the procedures for service. The parties also understand that administration of this case involves the case caption being included on a list of similar cases which will be posted on the website identified herein. The parties are always welcome to attend and participate in any conferences or hearings but that the Court will be providing notice of the proceedings via the State Judicial Website and Liaison Counsel.

Dated: _____

Dated: _____

Plaintiff's Counsel

Attorney ID: _____

Phone No.: _____

Defendant's Counsel

Attorney ID: _____

Phone No.: _____

Dated: _____

Defendant

The original of the document shall be filed via U.S. Mail addressed to Judge Jerome B. Abrams;
CO: Source Code Office Assistant; Chambers 1; 200 Fourth Avenue West; Shakopee, MN
55379-1220. A copy shall also be filed with Court Administration in the County in which this
matter was originally venued.